OHI-REA

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 854

THE STATE OF OHIO ON RELATION OF LOUIS MORREY GREENSTEIN,

Petitioner,

vs.

HONORABLE JOSEPH M. CLIFFORD, ET AL., AS JUDGES OF THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO AND BRIEF IN SUPPORT THEREOF.

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

The record and judgment of which a review is hereby sought by writ of certiorari are in the cause heretofore pending in the Supreme Court of the State of Ohio, styled: The State of Ohio on relation of Louis Morrey Greenstein, plaintiff-relator-appellant vs. Honorable Joseph M. Clifford, et al., as Judges of the Court of Common Pleas of Franklin County, Ohio, defendants-appellees, being Cause

No. 30,364 on the docket of said Supreme Court of the State of Ohio.

The duly certified record in the Supreme Court of the State of Ohio, to which an appeal was taken from the Court of Appeals of Franklin County, Ohio by petitioner here, is filed herewith under separate cover.

Your petitioner represents that he is aggrieved by the final judgment of the Supreme Court of the State of Ohio entered in said cause by which the said Supreme Court of the State of Ohio affirmed on the 21st day of November, 1945 the judgment of the trial court, being the Court of Appeals of Franklin County, Ohio. Said trial court denied the petition of your petitioner for a writ of prohibition to prohibit the Court of Common Pleas of Franklin County, Ohio, from hearing or entering any order or judgment relating to any issue in the second cause of action in a petition now pending therein in a suit, styled: Phillip A. Thal, plaintiff vs. Louis Morrey Greenstein, defendant.

Your petitioner states that the matters of issue in said cause are of a federal nature and are of peculiar gravity and unusual importance in that petitioner contends no state court of the State of Ohio has any jurisdiction to try any of the issues in said second cause of action, now pending in the Court of Common Pleas of Franklin County, Ohio, because exclusive jurisdiction to approve the alleged additional compensation is vested in the Wage Stabilization Board, succeeding the War Labor Board.

The fires of inflation are burning more dangerously today than they were during the war period and especially at the time when the Wage Stabilization Law was enacted. The purpose of the enactment of this law as stated in its title is to control inflation. If Thal succeeds in his plan to recover under an alleged oral agreement an increase in wages payable at the end of 1942, as he contends for, merely because

the war is ended, the purpose of the Wage Stabilization Law will be emasculated. That law will not serve as a brake on inflation. There are doubtless thousands of instances where employers told employees to wait until after stabilization restrictions were lifted and then they would be paid increases, which they insisted upon, for the period of time stabilization restrictions were in effect, but which were not approved by the War Labor Board during the war. If all of these promises, most of which, of course would be oral because a written promise would be evidence of a criminal violation of the Wage Stabilization Law, can now be enforced, the burning fires of inflation will blaze more disastrously.

This is a case of novel impression in this court. The United States District Court for the Eastern District of Pennsylvania on May 10, 1945 in *Werhardt* v. *Koenig* (60 Federal Supplement) refused to enforce an analogous wage agreement because it violated the Wage Stabilization Law. Hence, petitioner asserts again that it is of unusual national importance and of great and general public interest.

Summary and Short Statement of the Matter Involved

Petitioner, as a retail merchant in the City of Columbus, Ohio, employing more than eight persons at all times in question, is subject to the Federal Wage Stabilization Law, being officially known as "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and For Other Purposes". (c. 578, Sec. 7, 56 Stat. 767 (U. S. C. T. 50 App. Sec. 901(b)). Hence, he is subject to the jurisdiction of the Wage Stabilization Board. (Executive Order 9672—December 31, 1945, F. R. 11, p. 221, published January 4, 1946.) That Board is charged by federal law with enforcement of the Federal Wage Stabilization Law from which pertinent quotations are made at length

in the petition filed by this petitioner in said Court of Appeals of Franklin County, Ohio (relator below) (R. 1-9) to which reference is made for sake of brevity rather than to repeat the quotations here.

Petitioner employed Phillip A. Thal, who filed the above mentioned action in the Court of Common Pleas of Franklin County, Ohio, against the instant petitioner to recover on two different causes of action on two alleged *oral* agreements to pay him bonuses or additional compensation at the end of 1941 and also at the end of 1942. The Federal Wage Stabilization Law, not becoming effective until October 2, 1942, has no application to the bonus alleged to have become payable at the end of 1941, but it does directly confer exclusive jurisdiction on the Wage Stabilization Board as successor to the War Labor Board over the bonus alleged to have become payable at the end of 1942.

Hence the petitioner, as relator in the trial court in Ohio, being the Court of Appeals of Franklin County, Ohio, filed his petition for a writ of prohibition against the Judges of the Court of Common Pleas of Franklin County, Ohio, to prohibit them from hearing any of the issues contained in the second cause of action of Thal's amended petition in said Common Pleas Court suit.

The Court of Appeals of Franklin County, Ohio, denied the petition for a writ of prohibition and its said judgment was affirmed by the Supreme Court of the State of Ohio by final judgment entered, as aforesaid, on November 21, 1945.

Thal has, by his efforts to recover a judgment from the instant petitioner in said Common Pleas Court action, attempted to create a method of procedure to circumvent the said paramount Federal law which confers exclusive jurisdiction on the Wage Stabilization Board to approve

first said additional compensation, claimed in said second cause of action.

In said Common Pleas Court action Thal has as his objective the obtaining of a judgment against the instant petitioner and enforcement thereof by execution upon the latter despite the provision of the Federal Wage Stabilization Law that no wages can either be increased or decreased after October 3, 1942 without the prior approval of the War Labor Board, now the Wage Stabilization Board. Thal declines to present his claim for additional compensation to the War Labor Board for approval.

The petition in prohibition so filed by the instant petitioner alleged that sole jurisdiction to approve said claim of Thal in his second cause of action was vested in the War Labor Board of the United States (now in the successor Board known as the Wage Stabilization Board) under an Act of Congress entitled "An Act to Amend the Emergency Price Control Act of 1942 • • •", duly approved by the President of the United States on October 2, 1942, (c. 578, sec. 7, 56 Stat. 767) (U. S. C. T. 50 App. sec. 901 (b)) and also under Executive Order No. 9250 issued by the President of the United States pursuant to said Act of Congress (7 F. R. 7871, as amended by Executive Order No. 9381, September 25, 1943, 8 F. R. 13,083).

Said petition for a writ of prohibition further alleged that a general demurrer was overruled by said Court of Common Pleas in said action of *Thal* v. *Greenstein.*

Said petitioner further says (R. 6-7) therein:

> "• • • by virtue of said Act of Congress and said Executive Order such approval is required and said Board has sole jurisdiction to determine whether said oral agreement of employment of said Thal by your relator actually was made and, if so, its meaning and that said Court of Common Pleas has no jurisdiction whatsoever to construe said agreement or

to enforce the same prior to the approval thereof by the National War Labor Board or one of the several regional War Labor Boards constituted to assist said National War Labor Board in the several areas into which the United States is divided for the purpose of the administration of said Act of Congress and said Executive Order * * *.

"Relator further says that the decision by any state court of said action so instituted by said Thal against your relator is in no way and to no extent binding upon the War Labor Board. The War Labor Board may arrive at an entirely different decision than that announced by the state court in the above entitled action as to the existence or construction of said oral agreement alleged to have been entered into between your relator and said Thal. There is no appeal to the courts from any such decision by the War Labor Board but its decision is final. * * *

"Your relator declares that he has no adequate remedy either at law or in equity if, by judgment of the Common Pleas Court in said above described action, he is ordered to pay the amount claimed by said Thal in his alleged second cause of action. Your relator may nevertheless be subjected to fine and imprisonment for violation of the said Act of Congress as alleged above and also be denied the right to deduct said payment together with all other compensation paid to said Thal in arriving at his net income for the purpose of computing his Federal income tax because the Commissioner of Internal Revenue is authorized to deny a deduction for all compensation paid to an employee where the portion thereof, constituting an increase, has not been properly first approved by the War Labor Board which increase became effective after October 3, 1942, or as provided in United States Treasury Department Regulations, section 1002.28, as amended by Treasury Decision 5295." (1943 Cumulative Bulletin of the Bureau of Internal Revenue 1193.)

Said Court of Appeals of Franklin County, Ohio, on April 16, 1945, after allowing an alternative writ of pro-

hibition, quashed the same and sustained respondents' demurrer to said petition for a writ of prohibition and dismissed said petition.

An appeal was prosecuted by the instant petitioner as a matter of right in the Supreme Court of the State of Ohio. An assignment of errors was filed therein (R. 17). That court affirmed the trial court by judgment entry dated November 21, 1945 (R. 25).

Opinions of the Courts Below

The trial court in this case, being the Court of Appeals of Franklin County, Ohio, having original jurisdiction in the instant proceeding for a writ of prohibition, wrote an opinion. This is published in 61 N. E. 2d 921 and printed in the record herein (R. 19-23).

The Supreme Court of the State of Ohio wrote an opinion which is published in 146 O. S. 78 and printed in the record herein (R. 26-27).

Jurisdiction of This Court

Jurisdiction of this court is based upon the Judicial Code, Section 237 as amended by the Act of Congress of February 13, 1925, 43 Stat. 937, U. S. C., Title 28, section 344, paragraph (b), permitting petitions for writs of certiorari to be prayed for and issued to the highest state courts of the various states where a title, right, privilege or immunity is especially set up or claimed under a statute of the United States.

The action here sought to be reviewed, having been based upon "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes" (c. 578, sec. 7, 56 Stat. 767, U. S. C. T. 50 App. sec. 901 (b)), and Executive Order No. 9250 (7 F. R. 7871, as amended by Executive Order No. 9381 September

25, 1943, 8 F. R. 13,083), the jurisdiction of this court attaches because the Supreme Court of the State of Ohio has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by affirming the said lower court, as to call for an exercise of this court's power of supervision.

Some authorities sustaining the jurisdiction are:

In re Huguley Manufacturing Co., 184 U. S. 297, 301;
Southern Railway Co. v. *Southern Railroad Commission*, 236 U. S. 439;
Northern Pacific Railway v. *North Dakota*, 250 U. S. 135;
Pearson Candy Co. v. *Waits* (California Supreme Court), 7 Labor Cases 61919 (1943);
International Association of Machinists v. *Florida*, 15 So. 2d 485, 153 Fla. 672, 13 LRR 433 (1943).
International Brotherhood of Paper Makers v. *Wisconsin Employment Relations Board*, 245 Wis. 541, 15 LRR 224 (1944), 15 N. W. (2d) 806.

The Supreme Court of the State of Ohio is the highest court in the State of Ohio.

The original date of the final judgment of the Supreme Court of the State of Ohio, here sought to be reviewed is November 21, 1945.

Questions Presented

The basic question presented in this court on this record is whether an action under an alleged oral agreement to recover, as a bonus or additional compensation, an amount alleged to be payable at the end of 1942, after the Federal Wage Stabilization Law became effective, can be properly maintained in the Common Pleas Court of Franklin County, Ohio, as an action for the recovery of money only before

the right to pay such additional compensation is first submitted to or approved by the War Labor Board, or its new successor, the Wage Stabilization Board as the body having exclusive jurisdiction over this question.

As a corollary to this basic question, there is the question whether the War Labor Board has the sole and exclusive jurisdiction, not only to determine whether the additional compensation may be paid to the employee, but whether the existence and construction of the alleged oral agreement relating thereto is to be decided *only* by the War Labor Board as an incident to its exclusive jurisdiction over the determination of what wage increase may be paid.

Summary of Reasons for Allowance of Writ

I

In this case the Supreme Court of the State of Ohio has refused to issue a writ of prohibition to restrain the Court of Common Pleas of Franklin County, Ohio, from proceeding with the trial of the alleged second cause of action in the case entitled: *Phillip A. Thal* v. *Louis Morrey Greenstein*, although the Federal Wage Stabilization Law and Executive Order No. 9250 issued pursuant thereto dated October 3, 1942, being the paramount law of the land, vests exclusive jurisdiction to authorize wage increases after that date in the War Labor Board.

II

The failure of the Supreme Court of the State of Ohio to rest its decision solely on the federal right arising under the Federal Wage Stabilization Law and Executive Order No. 9250 is not conclusive, but the Supreme Court of the United States will decide the federal question if the necessary effect of the judgment of the state court is to deny the federal right which was specially set up and claimed at the

commencement of this proceeding since if the federal right is recognized and enforced a different judgment would be required from one resting in part upon local law.

Specifications of Errors to Be Urged

The Supreme Court of the State of Ohio erred:

1. In affirming the final judgment of the court of original jurisdiction of the State of Ohio which latter court denied a petition for a writ of prohibition to restrain the Court of Common Pleas of Franklin County, Ohio, from exercising any jurisdicton over the alleged second cause of action of the amended petition in the action of *Phillip A. Thal* v. *Louis Morrey Greenstein*, the latter being the instant petitioner.

2. Because sole and exclusive jurisdiction is vested in the Wage Stabilization Board, successor to the War Labor Board, to authorize any increase in wage payments at the end of 1942 after the Wage Stabilization Law and after Executive Order No. 9250 became effective.

3. Because the Wage Stabilization Board, successor to the War Labor Board, has exclusive jurisdiction to authorize an increase in wage payments to be made effective at the end of 1942 and no state court may enter a judgment in favor of an employee and against his employer or otherwise exercise jurisdiction in an action seeking to recover such an increase, alleged to be due and payable at the end of 1942, until after said increase is approved by said Board.

4. Because incident to the exercise of said exclusive jurisdiction the Wage Stabilization Board has sole and exclusive jurisdiction to determine if an alleged oral agreement was made between petitioner here as the employer and Thal as the employee by which a lump sum was to be paid at the end of 1942 representing an increase in wages.

5. In adjudicating, under the guise of a finding that the Court of Common Pleas of Franklin County, Ohio, has general jurisdiction of the subject matter of the right to recover a money judgment under an agreement of employment, the right of the employee to recover an increase in wages effective at the end of 1942 without the requisite prior approval of said increase by the War Labor Board, now succeeded by the Wage Stabilization Board, since the determination of the latter issue is vested primarily in said Board.

6. In failing to recognize the primary jurisdiction of the War Labor Board, now succeeded by the Wage Stabilization Board, to determine whether said increase in wages may lawfully be paid at the end of 1942 in a lump sum before exercising any jurisdiction in a suit by the employee against the employer to recover said lump sum.

7. In failing, because of the foregoing, to reverse the court of original jurisdiction of the State of Ohio and in failing to grant a writ of prohibition restraining the Court of Common Pleas from exercising any jurisdiction over said alleged second cause of action of Thal's amended petition against the instant petitioner until after the War Labor Board (now the Wage Stabilization Board) has approved said wage increase.

8. In depriving petitioner by virtue of the foregoing errors, of the rights, privileges and immunities vested in him under the Emergency Price Control Act of 1942, as amended, and Executive Order No. 9250, as amended.

Prayer

For the purpose of correcting the errors complained of and to the end that the rights of the petitioner may be determined in accordance with the federal law, your petitioner respectfully prays that a writ of certiorari be issued under

the seal of this court, directed to the Supreme Court of the State of Ohio, commanding it to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and proceedings of the said Supreme Court of the State of Ohio in the within described action of *State of Ohio ex rel. Louis Morrey Greenstein, Relator-Appellant* (the instant petitioner) v. *Honorable Joseph M. Clifford, et al., as Judges of the Court of Common Pleas of Franklin County, Ohio, Defendants-Appellees,* No. 30,364 on the docket of said court, as provided by law, and that your petitioner may have such other relief as to this court may seem appropriate, and that the said judgment of the Supreme Court of the State of Ohio may be reversed by this Honorable Court.

STATE OF OHIO EX REL.,
LOUIS MORREY GREENSTEIN,
Petitioner;

By HUGH M. BENNETT,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 854

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HONORABLE JOSEPH M. CLIFFORD, ET AL., AS JUDGES OF THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO,

Respondents

BRIEF IN SUPPORT OF PETITION

Summary of the Argument

The right to the payment of additional compensation at the end of 1942 must first be approved by the War Labor Board, now succeeded by the Wage Stabilization Board, before an employee can maintain an action against his employer to recover such a wage increase in a state court, because the federal Wage Stabilization Law is the paramount law of the land, requiring a state court to postpone its trial of such an action until said board has approved such a wage increase.

Emergency Price Control Act of 1942 as Amended, Section 5(a), Section 11;

Executive Order No. 9250, dated October 3, 1942, as amended by Executive Order No. 9381, dated September 25, 1943;

Executive Order No. 9672, dated December 31, 1945;

Treasury Decision 5295;

Wage Stabilization Board Rules (Title 29, C. F. R. Chapter VI, part 802;

1900 Corporation, being W. L. B. decisions 111-1138-D, dated November 27, 1943 (6 W. H. R. 1177);

Diamond Alkali Workers Union, etc. v. *The Buckeye Soda Company* (Not Reported), *infra.*

The necessary effect of the final judgment of the Supreme Court of Ohio is to deny the federal right of the petitioner under the federal Wage Stabilization Law and executive orders, issued thereunder since the recognition of this federal right requires a different judgment.

Chicago, Burlington & Quincy Railway Co. v. *People of the State of Illinois ex Rel.,* 200 U. S. 561, 580, 581;

Neilson v. *Lagow,* 12 Howard 98, 109, 111;

Opinion of the General Counsel of the W. L. B. dated August 18, 1944, War Labor Reports for November 1, 1944, page xxix *et seq.*);

Southern Railway Company v. *Railroad Commission,* 236 U. S. 439;

Northern Pacific Railway v. *North Dakota,* 250 U. S. 135;

International Association of Machinists v. *Watson, Attorney General of Florida,* 153 Florida 672;

International Brotherhood of Paper Makers v. *Wisconsin Employment Relations Board,* 245 Wisconsin 541.

The primary jurisdiction doctrine applies to the Wage Stabilization Board.

Armour & Co. v. *Alton R. R. Co.*, 312 U. S. 195;

Gen. Am. Tank Car Corp. v. *El Dorado Terminal Co.*, 308 U. S. 422;

Marony, et al. v. *Applegate, et al.*, 266 App. Div. 412, 42 N. Y. Supp. 2d 768;

United States Navigation Co. v. *Cunard Steamship Co.*, 284 U. S. 474;

Adler v. *Chicago & Southern Airline, Inc.*, 41 F. Supp. 366;

Thal has an adequate remedy before the Wage Stabilization Board;

1900 Corporation (W. L. B. Decision 111-1138-D, dated November 27, 1943, 6 Wage Hour Reporter 1177 for December 6, 1943).

ARGUMENT

The right to the payment of additional compensation at the end of 1942 must first be approved by the War Labor Board, now succeeded by the Wage Stabilization Board, before an employee can maintain an action against his employer to recover such a wage increase in a State Court, because the Federal Wage Stabilization Law is the paramount law of the land, requiring a state court to postpone its trial of such an action until said Board has approved such a wage increase.

Petitioner as a retail merchant in the City of Columbus, Ohio, employing more than eight persons at all times in question, is subject to the Act of Congress entitled "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and For Other Purposes". This Act was duly approved by the President of the United States on October 2, 1942. It is popularly known as the

Federal Wage Stabilization Law. Because of this Act petitioner was subject to the jurisdiction of the National War Labor Board and its several regional boards. Said Board has recently been succeeded by the Wage Stabilization Board which is operating with existing regulations as heretofore issued by the War Labor Board. (Executive Order 9672, December 31, 1945, F. R. 11, pg. 221, published January 4, 1946.) This new Board, as was the War Labor Board, is charged by said federal law and by Executive Order No. 9250 issued by the President on October 3, 1942, with the enforcement of the Federal Wage Stabilization Law, said Executive Order No. 9250, and its own regulations.

By virtue of said Executive Order No. 9250 (7 F. R. 7871, as amended by Executive Order No. 9381 September 25, 1943, 8 F. R. 13,083), it was provided among other things, in subdivision II—(1):

> "No increase in wage rates, granted as a result of voluntary agreement, collective bargaining, conciliation, arbitration or otherwise, and no decreases in wage rates, shall be authorized unless notice of such increases or decreases shall have been filed with the National War Labor Board and unless the National War Labor Board has approved such increases or decreases * * *.
>
> "III. * * * (2) The National War Labor Board shall constitute the agency of the Federal Government authorized to carry out the wage policies stated in this order, or the directives on policy issued by the director under this order. The National War Labor Board is further authorized to issue such rules and regulations as may be necessary for the speedy determination of the propriety of any wage increases or decreases in accordance with this order and to avail itself of the services and facilities of such state and federal departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the board.

"(3) *No provision with respect to wages contained in any labor agreemnt between employers and employees* (including the shipbuilding stabilization agreement as amended on May 16, 1942 and the wage stabilization agreement of the building construction industry arrived at May 22, 1942) *which is inconsistent with the policy herein enunciated or hereafter formulated by the director shall be enforced except with the approval of the National War Labor Board within the provisions of this order.* • • • (Emphasis supplied.)

"• • • VI. General Provisions. • • •

"(2) Salaries and wages under this order shall include all forms of direct or indirect remuneration to an employee or officer for work or personal services performed for an employer or corporation, including but not limited to bonuses, additional compensation, gifts, commissions, fees, and any other remuneration in any form or medium whatsoever (excluding insurance and pension benefits in a reasonable amount as determined by the director); *but for the purpose of determining wages or salaries for any period prior to September 16, 1942, such additional compensation shall be taken into account only in cases where it has been customarily paid by employers, to their employees.* 'Salaries' as used in this order mean remuneration for personal services regularly paid on a weekly, monthly, or annual basis • • •. (Emphasis supplied.)

"(5) The director may perform the functions and duties and exercise the powers, authority, and discretion conferred upon him by this order through such officials or agencies, and in such manner, as he may determine. *The decision of the director as to such delegation and the manner of exercise thereof shall be final.* (Emphasis supplied.)

(Signed) FRANKLIN D. ROOSEVELT.

The White House
October 3, 1942."

Section 5 (a) of said Act to Amend the Emergency Price Control Act of 1942 provides:

> "(a) No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. *The President shall also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive department and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.*" (Emphasis supplied.)

In Section 11 of said Act of Congress the following is found:

> "Any individual, corporation, partnership or association willfully violating any provision of this Act, or any regulation promulgated thereunder, shall, upon conviction thereof, be subjected to a fine of not more than $1,000.00 or to imprisonment of not more than one year, or to both said fine and imprisonment."

If the second cause of action in the amended petition in *Thal* v. *Greenstein* were tried by the Common Pleas Court and a verdict were returned in favor of Thal and against the instant petitioner, the latter would not be protected from the "double jeopardy" to which he would then be exposed by the improper exercise of jurisdiction by the Common Pleas Court in trying said second cause of action. The first jeopardy to which the petitioner would be exposed, if such a verdict were returned against him, arises from the jurisdiction of the Wage Stabilization Board to impose a fine and cause a criminal charge, resulting in a sentence of imprisonment, to be prosecuted against this petitioner for violation of the Federal Wage Stabilization Law and the Presidential Orders and the Wage Stabilization Director's decrees thereunder. Some of these have been quoted above.

The second jeopardy to which this petitioner would, under those circumstances, be exposed is the imposition of additional federal income and surtaxes by the Commissioner of Internal Revenue. The Commissioner may disallow any payment, being an increase in compensation to an employee, which had not been approved prior to payment by the Wage Stabilization Board, as a deduction in computing the net taxable income of the employer subject to the federal income and surtaxes. The petitioner, as an employer of Thal, can be penalized for making any payment of a wage increase to Thal without prior approval of the Wage Stabilization Board. The Commissioner can disallow not merely the increase, demanded by Thal if paid, but all compensation paid to Thal in 1942 if the Wage Stabilization Board does not approve the increase claimed by Thal. Such disallowance by the Commissioner can be made when he audits the income tax return of the petitioner and then determines whether any such payments of increased compensation to Thal, if made, have been approved first by the Wage Stabilization Board.

In other words, Thal received during 1942 a weekly wage of $75.00. He also received a $200.00 bonus at the end of 1941 and also 1942. He claims to be entitled to $3700 more for 1942, payable at the end of that year. These payments, if made, would aggregate $7800.00 for 1942 which are now being claimed by Thal as wages and additional compensation for 1942. If $7800 were paid by the petitioner, without prior approval of the $3700 payment by the Wage Stabilization Board, the entire $7800 could be disallowed as a deduction in arriving at the petitioner's net taxable income, as an employer, subject to federal income and surtaxes. If $7800 would be disallowed, to penalize the instant petitioner, by the Wage Stabilization Board as a deduction, resulting in an increase in income taxes, the Commissioner

of Internal Revenue can not decrease that penalty. Treasury Decision 5295. (1943 Cumulative Bulletin of Bureau of Internal Revenue 1193.)

The petition for a writ of prohibition alleges and the allegation is admitted by the demurrer of the instant respondents thereto, that Thal was paid as additional compensation only $200.00 in 1941 by the instant petitioner. Prior to that he was not employed by the petitioner. Hence, neither the petitioner nor Thal can properly claim that the latter was "customarily paid" $3900.00 at the end of each year, which Thal now claims was payable to him at the end of 1942. Executive Order No. 9250, as quoted above, provides that

> "for the purpose of determining wages or salaries for any period prior to September 16, 1942, such additional compensation shall be taken into account only in cases where it has been *customarily* paid by employers, to their employees." (Emphasis supplied.)

The purpose of the Wage Stabilization Law, which is officially known as the "Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and For Other Purposes" is, as this title implies, to keep wages from sky-rocketing. If there were an oral agreement, by which an employee was to receive an increase of $3700.00 a year for every year and he began his employment in 1941 and the agreement was made in March, 1942, as alleged, then at the end of 1942 he would have received $3700.00 more, if it were not for the Wage Stabilization Law; at the end of 1943, he would have received $7400.00 more than his starting wage; at the end of 1944, he would have received $11,100 more than his starting wage, etc. Thus, stabilization can not be effected if that type of contract, which is the type Thal here insists he has, is beyond the

reach or control of the Federal Wage Stabilization Law and the Wage Stabilization Board.

If the petition for a writ of prohibition is denied, employers and employees will be encouraged to connive together under such alleged contracts, which contract in the instant case is claimed to be oral, so as to pay to employees greatly increased wages which will really come out of the high surtax bracket payments, imposed by the United States Income Tax Law, if the Commissioner of Internal Revenue does not penalize the employer by disallowing the deduction for the increased compensation so paid.

The jurisdiction of the Wage Stabilization Board in this situation and over this form of alleged contract is clearly shown by its two rules which are found in Title 29, C. F. R. Chapter VI, Part 802, added by 7 F. R. 600 and revised by 8 F. R. 16, 712, as amended (also appearing in Volume IV, CCH 1945 edition, "Federal Administrative Procedure", at sections 802.54 and 802.57.) (See Appendix).

The Court will observe, under the last mentioned sections, that in this situation after a hearing and investigation by the Wage and Hour Office, there may not be a dispute case. This is pointed out in subdivision (iii) of (b)(2) of Section 802.54. In other words, where the Wage and Hour Division is satisfied "that no substantial question exists as to the party (employer) being a party" to the wage agreement, the Wage Stabilization Board goes ahead with the hearing under that particular rule of procedure rather than under the rule of procedure set forth in the Appendix relating to dispute cases. Thus, the Wage Stabilization Board may have jurisdiction over the wage increase claimed in the second cause of action in Thal's amended petition in the Common Pleas Court, either to approve it or disapprove it for the year 1942.

Approval by the Board must precede any action by Thal in the Common Pleas Court to recover the wage increase

under the regulations of the Wage Stabilization Board and Executive Order No. 9250.

The instant petitioner, if a judgment is entered against him in Thal's action by the Common Pleas Court, can be required to pay the judgment on execution. Such judgment and execution, however, will not protect the petitioner against a charge of a violation of the Wage Stabilization Law and the Executive Orders issued thereunder arising from the payment of a wage increase without prior approval of the Wage Stabilization Board. The petitioner for the payment of such a judgment and execution thus would be subject to fine, imprisonment and additional federal income and surtaxes. This is the "double jeopardy" to which reference above has been made.

The proceedings of the War Labor Board, the immediate predecessor of the Wage Stabilization Board, are filled with cases where unauthorized compensation increases were disallowed and where penalty fines were imposed for the payment of such increases.

Thal's employment by the petitioner began in 1941 and was terminated in January, 1943.

This court readily understands that if trial courts would have jurisdiction of such claims as that made by Thal, the Wage Stabilization Law could be nullified in large part. Actions could be instituted by employees against employers, willing to enter into such schemes, on alleged claims, as Thal is here claiming to have been made with instant petitioner, as his employer, prior to October 2, 1942. If the employer were willing to have the Wage Stabilization Law so easily by-passed, the employer could make a weak defense to his employee's action with the result that a judgment would be entered against the employer. The employee would get more compensation which the employer would always try to justify by saying that he had

been required to pay it by virtue of the judgment against him entered by the trial court of the state.

The exclusive jurisdiction, over the instant matter of the War Labor Board, is shown by the Board's decision in the 1900 Corporation, being Decision 111-1138-D, dated November 27, 1943, involving also the United Electrical Radio and Machine Workers of America, (CIO), St. Joseph, Michigan. This is reported in 6 Wage Hour Reporter 1177 for December 6, 1943.

The Union in this case protested the company's action, contending that failure to pay a customary bonus at the end of the year constituted a violation of Executive Order No. 9250 in that it constituted a decrease in wages not approved by the War Labor Board.

The Board has exclusive jurisdiction because the Wage Stabilization Law and the Executive Orders of the President of the United States thereunder are the paramount law of the land, superseding the law of Ohio or of any other state, which is subordinate thereto.

The Regional War Labor Board in the 1900 Corporation case ordered the company to pay the year-end compensation, but the National War Labor Board on appeal reversed the regional board. Thus, there was jurisdiction exercised over the same type of dispute in that case as we have here presented by Thal.

A similar attempt, to that being made by Thal to get a wage increase in the Common Pleas Court of Franklin County, Ohio, was made by the Diamond Alkali Workers Union, Local 12231, District 50, United Mine Workers of America in a suit against The Buckeye Soda Company (not reported) in the Court of Common Pleas of Lake County, Ohio, in which Judge Baker of that court on June 16, 1945 handed down an opinion declaring that his court had no jurisdiction whatever. No appeal from that decision was prosecuted.

The following is quoted from the conclusion of that opinion:

> "*The court in this case rules that it is prohibited by law from ruling that the escalator clause can be enforced until such action has been approved by the National War Labor Board.* It makes such ruling for the following reasons:
>
> "1. Congress expressly provided that no employer shall pay and no employee shall receive wages or salaries in contravention of the regulations promulgated by the President under the Stabilization Act of 1942.
>
> "2. *The positive provision by Congress and the President that no increase in wages, even when the result of a Voluntary agreement, shall be authorized unless approved by the National War Labor Board.*
>
> "3. A definite order that no provision with respect to wages contained in any labor agreement which is inconsistent with Executive Order Number 9250 shall be enforced except with the approval of the National War Labor Board.
>
> "4. *The court has no authority to order the defendant to do something which is not only illegal but is punishable by fine or imprisonment.*
>
> "5. Executive Order No. 9250 specifically states that wages shall include all forms of direct or indirect remuneration, including additional compensation and any other remuneration in any form or medium whatsoever. *Clearly, the granting of an increase in wages for work performed now, even though said increase was not to be payable until a later date, would be contrary to these provisions and illegal unless approved by the National War Labor Board.*
>
> "This same method of getting around the Little Steel Formula was suggested by others to the National War Labor Board and the board rejected such plans. For instance, in American Cyanamid Chemical Corporation

v. United Mine Workers of America, Local 12059, District 50, the National War Labor Board Panel for the Third Region, on August 22, 1944, gave a directive order denying the Union's request that wages accruing under the automatic escalator clause shall be placed in escrow and paid to the workers on the termination of the war. A similar holding denying approval of a proposed deferred wage payment plan was made in the case of Milwaukee Electric Railway and Transport Company in the Sixth Region August 22, 1944.

"6. General Order Number 22 expressly provides that no escalator clause shall be enforced which would result in rates in excess of 15% above the rates prevailing on January 1, 1941.

"7. There is no authority in the state law for ordering such postponement of a money judgment. Although the court, in foreclosure cases, provides for a specified number of days in which payment of the judgment may be made before the property shall be sold to satisfy the judgment, nevertheless, the court knows of no law or cases where a court has held that the money judgment itself, once rendered, is not enforcible until some indefinite future date. The time of payment of a judgment is not discretionary with the court. If the employees are legally entitled to their money, they are entitled to it now." (Emphasis supplied.)

The necessary effect of the final judgment of the Supreme Court of Ohio is to deny the federal right of the petitioner under the Federal Wage Stabilization Law and Executive Orders, issued thereunder, since the recognition of this federal right requires a different judgment.

The Supreme Court of the State of Ohio under the guise of affirming the judgment of the Court of Appeals of Franklin County, Ohio, and declaring in its opinion

"General jurisdiction of the subject matter having been conferred by statute upon the Court of Common

> Pleas, a writ of prohibition should not issue denying that court the right to determine whether such jurisdiction attaches under the facts of a particular case",

decided issues over which the Wage Stabilization Board has exclusive, as well as primary jurisdiction by Act of Congress.

In *Chicago, Burlington & Quincy Railway Co.* v. *People of the State of Illinois ex Rel.*, 200 U. S. 561, 50 L. Ed. 596, 26 S. Ct. 341, the Court said:

> "• • • the general rule is that where the judgment of the state court rests upon an independent, separate ground of local or general law, broad enough or sufficient in itself to cover the essential issues and control the rights of the parties, however the Federal question raised on the record might be determined, this court will affirm or dismiss, as the one course or the other may be appropriate, without considering that question. But it is equally well settled that the failure of the state court to pass on the Federal right or immunity specially set up, of record, is not conclusive, but *this court will decide the Federal question if the necessary effect of the judgment is to deny a Federal right or immunity specially set up or claimed, and which, if recognized and enforced, would require a judgment different from one resting upon some ground of local or general law.*" (Emphasis supplied.) See Particularly 200 U. S. pp. 580-581.

The Supreme Court of the State of Ohio in this case, has evaded the consideration of the Federal issue under the Federal Wage Stabilization Law and Executive Orders promulgated thereunder. The Supreme Court of the United States should consider the Federal issue involving the supremacy of the Act of Congress over the law of a State in accordance with the principles laid down in *Neilson* v. *Lagow*, 12 Howard 98, 109-111, 13 L. Ed. 909, 914, 915.

As was pointed out by the General Counsel of the War Labor Board in his opinion dated August 18, 1944 (War Labor Reports for November 1, 1944, page xxix, *et seq.*):

> "It is our opinion that, once the Board has properly acquired jurisdiction, the supremacy of the federal act suspends the operation of the state law with respect to disposition of the issues in dispute."

The foregoing opinion appears to be supported by *Southern Railway Company* v. *Railroad Commission,* 236 U. S. 439, from which the following is quoted:

> "The test * * * is not whether the state legislation is in conflict with the details of the federal law or supplements it but whether the state had any jurisdiction of a subject over which Congress has exerted its exclusive control * * * Congress has so far occupied the field of legislation relating to the equipment of freight cars with safety appliances as to supersede existing and prevent further legislation on the subject."

The foregoing rule is further supported by *Northern Pacific Railway* v. *North Dakota,* 250 U. S. 135, from which the following is quoted:

> "The elementary principle that under the Constitution the authority of the Government of the United States is paramount when exerted as to subjects concerning which it has the power to control is indisputable. This being true, it results that, although authority to regulate within a given sphere may exist in both the United States and in the states, when the former calls into play constitutional authority within such general sphere, the necessary effect of doing so is that, to the extent that any conflict arises, the state power is limited since in cases of conflict that which is paramount necessarily controls that which is subordinate."

In Pearson Candy Co. v. *Waits* (California Superior Court, 7 Labor Cases 61, 919 (1943)), the California Court

had been asked to adjudicate the validity of a contract entered into pursuant to an order of the War Labor Board. The California Court dismissed the suit. It held that for the duration of the war it considered state courts deprived of the authority to litigate matters over which the board had taken jurisdiction.

The same conclusion was reached by the Florida Supreme Court in *International Association of Machinists* v. *Watson, Attorney General of Florida,* 153 Fla. 672, 15 So. 2d 485, 13 LRR 433 (November 10, 1943). In that case the Florida Supreme Court overruled a contention by the State Attorney General that a closed shop agreement to which the Tampa Shipbuilding Company, a Florida corporation, was a party, violated the public policy of the state of Florida. The Attorney General had instituted a quo warranto proceeding in the state court to prevent the company from continuing to operate under the agreement. Directing that the proceeding be quashed, the Supreme Court of Florida said:

> "The National War Labor Board was created by Executive Order Jan. 12, 1942, for the purpose of procuring an uniterrupted prosecution of the war on the part of labor and industry. This Board was given the duty of disposing of all labor disputes which might affect the war effort. In consideration of labor agreeing to a policy of no strikes for the duration of the war, labor was given the right of collective bargaining, and the National War Labor Board was set up to settle all disputes peacefully. Now, if the executive department of each of the several states, through its attorney general, is allowed to question in the courts of the several states whether as a matter of public policy the war effort is being properly prosecuted, *then a clash is inevitable among state tribunals and between them and federal agencies expressly created for that purpose.*" (Emphasis supplied)

In *International Brotherhood of Paper Makers* v. *Wisconsin Employment Relations Board,* 245 Wis. 541, 15 N. W. 2d 806, 15 LRR 224 (1944), the Wisconsin Supreme Court on October 10, 1944, ordered that a question of reinstating a discharged employee and enforcing the other provisions of the state board's order remain in suspense

> "for the duration of the war or until such time as the order of the National War Labor Board ceases to be effective."

In explaining this disposition of the case, the Wisconsin Supreme Court stated that the War Labor Board's order

> "having been issued in the exercise of the war powers of the Executive in time of war supplants and operates to suspend state action in regard to the same subject matter."

Those opinions show that the writ of prohibition should be granted in the case at bar because there is no jurisdiction in the Common Pleas Court of Franklin County, Ohio, in the action of *Thal* v. *Greenstein* to decide whether the wage increase there claimed in the second cause of action should be approved or whether such an alleged oral agreement exists or what it means, if it does exist. That jurisdiction is vested solely and primarily in the Wage Stabilization Board by virtue of the Federal Wage Stabilization Law and the Executive Orders issued pursuant thereto which constitute the paramount law of the land.

The Primary Jurisdiction Doctrine Applies to the Wage Stabilization Board

The primary jurisdiction doctrine, heretofore applied to functions of the Interstate Commerce Commission in the field of railroad rates (*Armour & Co.* v. *Alton R. R. Co.,* 312 U. S. 195, 85 L. Ed. 771, 61 S. Ct. 598; *Gen. Am. Tank*

Car Corp. v. *El Dorado Terminal Co.*, 308 U. S. 422, 84 L. Ed. 361, 60 S. Ct. 325), and pipe line joint rate divisions, (*Marony et al.* v. *Applegate et al.*, 266 App. Div. 412, 42 N. Y. Supp. (2d) 768), the United States Shipping Board in the field of ocean rates (*United States Navigation Co.* v. *Cunard Steamship Co.*, 284 U. S. 474, 76 L. Ed. 408, 52 S. Ct. 247), and the Civil Aeronautics Board in the field of airplane flight regulations (*Adler* v. *Chicago & Southern Airlines Inc.*, 41 F. Supp. 366), would seem equally applicable to the functions vested in the Wage Stabilization Board as the successor to the War Labor Board under the Federal Wage Stabilization Law and the Executive Orders issued thereunder.

Indeed, the doctrine seems especially applicable since by the Federal law and orders, the Board has been given very broad powers.

The judgment of the New York Court in *Marony et al.* v. *Applegate et al.*, 266 App. Div. 412, 42 N. Y. S. (2d) 768, shows that the writ of prohibition should be granted in this case as the bill was dismissed in that case until the Interstate Commerce Commission could first determine the primary question of what division of rates would be fair and reasonable. Here the Common Pleas Court should be prohibited from trying the second cause of action in *Thal* v. *Greenstein* until the Wage Stabilization Board first approves the wage increase demanded by Thal for 1942.

Thal Has an Adequate Remedy Before the Wage Stabilization Board

As we have mentioned above, the predecessor to the Wage Stabilization Board—that is, the War Labor Board—exercised jurisdiction in a comparable situation in the 1900 Corporation (Decision 111-1138-D, dated November 27,

1943, 6 Wage Hour Reporter 1177 for December 6, 1943). Thal complains that by the failure to pay $3700 by the end of 1942, his wage was illegally decreased. If so, he can and must invoke the exclusive jurisdiction of the Wage Stabilization Board over wages because the Federal Wage Stabilization Law says that wages may neither be increased nor decreased without the approval of the said Wage Stabilization Board.

If the Wage Stabilization Board approves the additional compensation demanded by Thal in his second cause of action of his amended petition, then he can sue the petitioner here in the Common Pleas Court in Ohio if the petitioner would still refuse to pay the then approved increase in compensation. The statute of limitations in Ohio is six years from the date of the alleged oral agreement and thus the remedy of an action in the state courts of Ohio will still be available to Thal if he secures the requisite prior approval of the Wage Stabilization Board for the additional compensation which he claims for the year, 1942.

The writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Rules of Procedure

(Title 29, C. F. R., Ch. VI, Part 802, added by 7 F. R. 600, and revised by 8 F. R. 16712, as amended.)

(Source) C. C. H. 1945 Edition "Federal Administrative Procedure" Volume IV.

Jurisdiction and procedure of Regional War Labor Boards.

Section 802.54. (A) The handling of preliminary inquiries about jurisdiction. (1) An employer or a union (or any employee, or a group of employees not represented by a union) directly concerned in a proposed wage and salary adjustment, may, jointly or separately, ask the nearest designated officer of the Wage and Hour and Public Contracts Division of the United States Department of Labor in the region (hereinafter referred to as the Wage and Hour Office) for a ruling (as) to whether the proposed adjustment may be made without Board approval. The request for a ruling, if filed by an employer alone, shall state whether there is a duly recognized or certified collective bargaining agent for any or all of the affected employees which has not joined with the employer in the request for the ruling, and if so, the name and address of such collective bargaining agent. If filed by a union, or on behalf of any or all of the employees, without joinder by the employer, the request for ruling shall state the name and address of the employer. If the request for ruling affects any employees represented by a duly recognized or certified collective bargaining agent and the employer or the collective bargaining agent has not joined in the request, a copy of the request for a ruling and the ruling shall, after ruling has been made, be sent to the employer or the collective bargaining agent, whichever has not joined in the request, and to the appropriate regional attorney by the Wage and Hour office.

(2) If said ruling is that the proposed wage or salary adjustment may be made without approval of the Board:

(i) The ruling shall be deemed as authoritative, and shall remain in effect unless revised as provided below.

(ii) If, on receipt of the ruling of the Wage and Hour office, it is reversed by the Regional Attorney (after consultation, where necessary, with the Regional Wage Stabilization Director) the Wage and Hour office shall be notified promptly, and shall immediately notify the person or persons who made the inquiry that the adjustment requires approval. If in the meantime the employer has made an adjustment, relying upon the ruling by the Wage and Hour Office, that it would not need approval:

(a) the adjustment may be continued in effect for a period of 10 days following the notification by the Wage and Hour Office, within which period the employer may file with the Wage and Hour Office (jointly, with a duly recognized collective bargaining agency, or by himself, as subsequently provided), an application for approval of the adjustment and

(b) if such an application is so filed, the adjustment may be further continued in effect until and unless it is finally disapproved. Such disapproval shall take effect only from the date of the issuance of the order of disapproval.

(iii) If the Wage and Hour Office to which an inquiry has been addressed, rules that the proposed adjustment cannot properly be made without approval, the ruling shall be deemed to be authoritative. The person or persons who made the inquiry may seek from the Regional Attorney, by written petition, filed within 10 days after the ruling of the Wage and Hour Office, a reversal of the ruling. The Regional Attorney's ruling (after consultation, where necessary, with the Regional Wage Stabilization Director) on the question so submitted shall be transmitted to the applicant and to the other parties, if any, required by subparagraph (1), through the Wage and Hour Office.

(B) The filing of applications for approval of wage or salary adjustments.

(1) Each application for approval of proposed voluntary wage and salary adjustments shall be filed with the nearest Wage and Hour Office in the region. All applications shall

be made upon appropriate forms prepared by the National War Labor Board.

(2) Such applications may be of two kinds. The first kind, in which approval is sought of an adjustment agreed upon by the parties, may be signed by either party (or jointly by any or all parties to the contract). The application shall state whether or not the parties to the contract have signed the application, and shall state the names and addresses of each party not signing the application. If there be any such party who has not signed, the Wage and Hour Office at which the application was filed, shall as agent of the Board, before acting on the application, send said party a notice of the application. The notice shall request the party to state whether he contests the fact of the contract having been made. If, within 7 days of the sending of the notice, he has not filed a statement contesting such fact, or if he files a statement admitting it, the application will then be acted upon. If he contests the fact of the contract having been made, the matter will be determined to be a dispute case and the application Form 10 will be returned to the party which filed the application, and a copy of the letter returning the application will be sent to the contesting party, unless (i) the contract was in writing, (ii) the writing or a certified or otherwise authenticated copy thereof has been produced and (iii) the Wage and Hour Office is satisfied that no substantial question exists as to the party being a party thereto. Where the Wage and Hour Office is so satisfied, it shall rule accordingly and proceed with the handling of the application. The ruling may be reviewed (on petition of the protesting party) by the Regional War Labor Board under subparagraph (7) of this paragraph. His ruling shall be final.

(3) The second kind of application, in which the employer on his own initiative wishes to make a wage or salary adjustment, shall be signed either (i) jointly by the employer and a duly recognized collective bargaining agency for any or all of the employees who are to be affected by the proposed wage or salary adjustment or (ii) by the employer alone. • • •

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(b) Directive orders in dispute cases.—(1) Regional War Labor Boards are authorized to issue directive orders in dispute cases in conformity with the policy of the National War Labor Board. Each such directive order shall bear the date of its actual issue, and shall be issued to the parties when made. The issuance of any provision of a directive order, however, which relates to a wage or salary adjustment, may be stayed if two or more public members of the Regional Board dissent from the provision and request that its issuance be stayed. In such event a copy of the directive order and the request for the stay, together with a statement of the reasons for such request, shall be immediately transmitted to the National War Labor Board. The provision so sought to be stayed shall not be issued to the parties until the expiration of ten days after receipt in Washington of the request for the stay, unless (i) the issuance of such provision is earlier approved by the National War Labor Board or (ii) within such ten-day period the National War Labor Board sets the case down for review. In the latter event, the Executive Assistant to the National War Labor Board shall communicate the Board's action to the Regional Board, and the stay shall continue in effect until the case is finally disposed of.

(b) (2) If after the issuance of a directive order no timely petition for review is filed within the period provided in paragraph (c) below, and if the National War Labor Board within such a period does not review the order on its own motion, the order shall on the day following the last day for filing such a petition stand confirmed as the order of the National War Labor Board and shall immediately be effective according to its terms: Provided, That the National War Labor Board may at any time prior to the expiration of the time for the filing of a petition for review make such an order, or any part thereof, immediately effective pending any further proceedings. If a timely petition for review of a directive order of a Regional Board

is filed by a party in accordance with the provisions of paragraph (c) below, or if the National War Labor Board reviews such an order on its own motion, the entire order shall be suspended, unless and until the National War Labor Board directs, or has directed, otherwise, or unless the parties otherwise agree. However, the date of expiration of the escape period fixed in a directive order of a Regional Board granting a maintenance of membership provision shall not be affected by the filing of a petition for review of this or any other provision of the order. If only a part of the order is sought to be reviewed, any party may petition the Regional Board to make the rest of the order immediately effective according to its terms. The parties may in any case mutually agree upon the date when the order, or any part thereof, shall take effect, except that where a wage or salary adjustment is made subject to the approval of the Economic Stabilization Director, the parties may not by their agreement make such adjustment effective prior to the date of such approval. Notwithstanding any other provisions of this paragraph, that part of the directive order of a Regional Board which continues in effect the terms and conditions of a prior contract which has expired or been otherwise terminated, shall not be suspended or stayed by the filing of a petition for review, but shall be effective according to its terms, unless and until the National Board, upon consideration of a petition for review, otherwise directs.